



**MCI Telecommunications
Corporation**

1801 Pennsylvania Avenue, NW
Washington, DC 20006

RECEIVED

AUG 14 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL

August 14, 1998

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

**Re: In the Matter of Amendment of the Commission's Ex Parte Rules in Joint
Board Proceedings; GC Docket No. 98-73**

Dear Ms. Salas:

Enclosed herewith for filing are the original and nine (9) copies of MCI Telecommunications Corporation's Comments regarding the above-captioned matter.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Comments furnished for such purpose and remit same to the bearer.

Sincerely yours,

Henry Hultquist

Enclosure
HGH

No. of Copies rec'd
List ABCDE

029

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of the Commission's Ex Parte)
Rules in Joint Board Proceedings)
)
)

GC Docket No. 98-73

RECEIVED

AUG 14 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF MCI TELECOMMUNICATIONS

In this notice, the Commission proposes to amend its ex parte rules in Joint Board proceedings and proceedings that involve a recommendation from a Joint Board. If adopted, the proposal would exempt from disclosure, in the above-described proceedings, ex parte presentations by state commissions, their members and their staffs to Joint Boards and the FCC, unless the presentations were of substantial significance and clearly intended to influence the ultimate decision.¹ Thus, in these proceedings, presentations by state commissions, their members and their staffs, would receive treatment identical to that accorded to presentations by members of Congress, Congressional staff, and other agencies or branches of the federal government and their staffs. *See* 47 C.F.R. §§ 1.1203(a)(4); 1.1206(b)(3).

The Commission's tentative conclusion that this change would "further [its] goal of closer federal-state cooperation in Joint Board proceedings," may be correct.² Common sense dictates

¹Existing rules require the filing of written presentations, and summaries of oral presentations that contain new arguments or data. 47 C.F.R. § 1.1206(b).

²Notice at paragraph 7.

that disclosure requirements make cooperation between the decision-maker and a party (or “interested person”), more difficult. That, after all, is what ex parte restrictions do. They retard cooperation between individual parties and the decision-maker, and in so doing attempt to ensure the fairness and integrity of decision-making. See, e.g., 47 C.F.R. § 1.1200(a). More fundamentally, ex parte rules protect parties’ due process rights by providing them with notice of communications between the decision-maker and other parties. Without such notice, a party might have no realistic opportunity to be heard on issues raised in undisclosed communications. Secrecy is inconsistent with “fundamental notions of fairness implicit in due process and with the ideal of reasoned decision-making on the merits which undergirds all of our administrative law.” Home Box Office, Inc. V. Federal Communications Commission, 567 F.2d 9 (D.C. Cir. 1977). The Commission should not adopt the proposed change if it would harm the appearance of fair decision-making.

In the notice, the Commission addresses the issue of fairness indirectly, by observing that “states participating in these proceedings participate as other public agencies grappling with the complex policy and statutory interpretation issues.”³ The Commission appears to view the states as neither parties nor decision-makers,⁴ but as neutral colleagues in the difficult business of telecommunications regulation. The pretense that the states are disinterested participants in these proceedings cannot withstand the slightest scrutiny. The recent history of the Universal Service

³Notice at paragraph 7.

⁴State members of Joint Boards are, of course, decision-makers in those proceedings. 47 C.F.R. § 1.1202(c). As decision-makers, presentations to those state Joint Board members fall within the Commission’s ex parte rules. Since they are decision-makers, they should continue to be governed by different rules than those that applies to other state commissioners.

Joint Board and its aftermath, provides ample evidence of the fact that the states have an important interest in representing intrastate ratepayers.⁵

Among the many contentious issues in the Universal Service proceeding, is the division of Universal Service support between the federal and state jurisdictions. The Commission determined that 25% of the required support should come from a federal Universal Service mechanism, with the remaining 75% to be provided by state Universal Service subsidies.⁶ If, as the Commission suggests, the states were merely disinterested participants, grappling with the complexities of policy and statutory interpretation, one would expect the states to align somewhat randomly on the issue. Not surprisingly, they have not. A number of rural states have vehemently objected to the Commission's treatment of this issue, while urban states have not.⁷ This alignment is perfectly reasonable given their interest in their own states' rate levels.

The proposed exemption would apply unless the presentation were of substantial significance *and* clearly intended to influence the ultimate decision. Under this standard, there would be no disclosure of moderately significant presentations, even if clearly intended to influence the ultimate decision. Nor would other parties have any notice of substantially significant presentations unless clearly intended to influence the ultimate decision. In the meantime, the states would continue to have notice of presentations by other parties, regardless of

⁵If the ratepayers chose to participate directly, they would do so subject to the Commission's ex parte rules.

⁶In the Matter of Federal-State Joint Board on Universal Service, *Report and Order*, ¶269, CC Docket No. 96-45 (rel. May 8, 1997).


⁷*See, e.g.*, statement of March 6, 1998 statement by Bruce Hagen, Commissioner North Dakota Public Utilities Commission, to the Commission; statement of March 6, 1998 by Marlene Johnson, Chair of the District of Columbia Public Service Commission, to the Commission.

their significance or intent. This asymmetry is not consonant with fundamental notions of fairness and can only damage the fairness of the proceeding.

Since the passage the of the Telecommunications Act of 1996, the Commission and the states have sometimes clashed over issues of jurisdiction and policy. In this context, the Commission's goal of fostering greater cooperation in proceedings that involve a Joint Board, is understandable. But the proposed change to the Commission's ex parte rules would unnecessarily jeopardize the fairness and integrity of the Commission's decision-making in these proceedings.

Respectfully submitted,

MCI TELECOMMUNICATIONS
CORPORATION

By: 
Henry Hultquist
MCI TELECOMMUNICATIONS
CORPORATION
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202)887-2502

CERTIFICATE OF SERVICE

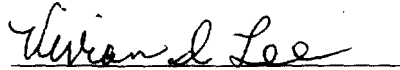
I, Vivian I. Lee, do hereby certify that copies of the foregoing Petition for Partial Reconsideration were sent via first class mail, postage paid, to the following on this 14th day of August, 1998.

Chairman William E. Kennard*
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

International Transcription Services *
1231 20th Street, N.W.,
Washington, DC 20036

*HAND DELIVERED

Commissioner Susan Ness*
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554


Vivian I. Lee

Commissioner Harold Furchtgott-Roth*
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

Commissioner Michael Powell*
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Commissioner Gloria Tristani*
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

David S. Senzel*
Office of General Counsel
1919 M Street, N.W.
Room 610
Washington, D.C. 20554